

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

MERIDEN CENTER

Employer

and

NEW ENGLAND HEALTH CARE EMPLOYEES
UNION, DISTRICT 1199, AFL-CIO

Petitioner

Case No. 34-RC-1710

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is engaged in the operation of a skilled nursing facility in Meriden, Connecticut. The Petitioner seeks to represent a unit composed of approximately 100 full-time and regular part-time service and maintenance employees employed at the Meriden facility. Although otherwise in accord as to the composition of the unit, the Employer, contrary to the Petitioner, would exclude the 3 full-time cooks as statutory supervisors.

The 3 disputed cooks (Philip Dontigney, Ann Wulff, and William Harlen) work in the dietary department which is under the overall supervision of Food Service Director Frank Rosa. Also working in the dietary department are 16 other individuals: 2 relief cooks/dietary aides,¹ a dietician, and 13 dietary aides. The dietary department operates a morning and an evening shift, 7 days a week. The morning shift starts at 5:00 a.m. and continues to 2:30 p.m. It is staffed by a cook who works from 5:00 a.m. to 1:00 p.m., and 4 dietary aides who start between 6:00 a.m. and 7:00 a.m., and work to 2:00 p.m. or 2:30 p.m. The evening shift starts at 11:30 a.m. and continues to 7:30 p.m. It is staffed by a cook who works the full shift, and 4 dietary aides who start between 3:30 p.m. and 4:30 p.m., and work to 7:30 p.m.

The record indicates that the cooks are primarily occupied in preparing meals for the Employer's residents,² and that they are assisted by the dietary aides who, *inter alia*, load and unload the serving carts; serve the meals; and clean the kitchen equipment, dishes, utensils, and pots and pans. The record further indicates that the cooks and dietary aides are all hourly paid,³ wear the same uniforms, and receive the same benefits.

¹ The parties have stipulated that the 2 relief cooks/dietary aides, John Gogliettino and Jose Crespo, are to be included in the unit.

² The record does not indicate whether meals are prepared for employees or the public.

³ The dietary aides receive between \$6.75 and \$15.00 an hour. The cooks receive between \$10.00 and \$16.62 an hour.

As noted above, the overall responsibility for supervising the dietary department is vested in Food Service Director Rosa. Rosa works Monday to Friday from 7:00 a.m. to 3:00 p.m. Within the department, Rosa hires employees, issues various forms of discipline, determines wage increases, and prepares the dietary aides' work assignment schedules.

The record indicates that for some period of time prior to August 1998, the position of food service director was vacant. During that period, the cooks bore the title "cook/supervisor," participated in the hiring of dietary aides, and received an additional \$1.00 an hour wage. Since Rosa's appointment, however, the cooks title has changed, they no longer participate in the hiring process, and their hourly wage has been reduced by \$1.00.

Although the cooks can call replacements for absent dietary aides, the record establishes that they must do so from a pre-determined list maintained by the Employer, that such work is voluntary, and that it cannot result in overtime compensation unless it has been previously authorized. Although the cooks can also allow dietary aides to leave work early, it does not appear that this involves the exercise of independent judgment.

Notwithstanding the aforementioned limitations and restrictions on their authority, the record clearly indicates that the cooks can currently discipline dietary aides by issuing verbal and written warnings, and suspend them by sending them home early for acts of insubordination. It further indicates that the cooks regularly assist Rosa in preparing the dietary aides' annual evaluations by providing meaningful input on the aides' job performance, and that the performance ratings which result therefrom directly affect the aides' annual wage increases.⁴

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With regard to personnel actions other than raises, as the Petitioner correctly notes in its post-hearing brief, they appear to be subject to additional independent verification. Thus, as to such other matters, it does not appear that the cooks' input on evaluations constitutes effective recommendations. However, contrary to the Petitioner's contention, in the absence of evidence that the Employer utilizes anything other than the evaluations in making wage increases, I find that the cooks' recommendations are not merely reportorial in nature.

Based upon the above and the record as a whole, I find that the cooks are supervisors within the meaning of the Act, and I shall exclude them from the unit found appropriate herein. In reaching this conclusion, I note particularly the cooks' authority to discipline employees, to effectively recommend rewards by evaluating employee performance, that the food service director is currently present at the facility for less than half of the department's 101½ hour work week, and that a contrary determination would result in only one supervisor for 19 unit employees. *Albany Medical Center Hospital*, 273 NLRB 485 (1984).⁵

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time ⁶ service and maintenance employees, including certified nurses aides, residential service coordinators, restorative certified nurses aides, housekeepers, laundry employees, porters, maintenance employees, dietary aides, relief cooks/dietary aides, and recreational aides employed by the Employer; but excluding, office clerical employees, cooks, and guards, professional employees, and other supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the

⁵ In view of my reliance on the particular facts noted, I need not consider whether supervisory status is further established by the cooks' position and authority during the time that there was a vacancy in the position of food service director.

⁶ Based upon the parties stipulation, I find that those per diem employees who worked an average of 4 hours per week in the calendar quarter immediately preceding this Decision and Direction of Election are eligible to vote in the election directed herein.

payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by New England Health Care Employees Union , District 1199, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before April 16, 1999. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by April 23, 1999.

Dated at Hartford, Connecticut this 9th day of April, 1999.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

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